INDEX TO BRIEF.

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	1
STATEMENT	2
ARGUMENT	6
1. The Decision of the Superior Court of Pennsylvania Was Based on an Adequate and Independent State Ground	6
2. The Decision Below Is Not an Appropriate Vehicle for Re-Examination of the Rules Established by Miranda v. Arizona	12
3. Respondent Was Denied the Warnings to Which He Was Entitled Under Pennsylvania Law, and He Did Not Waive His Right to Receive Such Warnings	15
CONCLUSION	18

TABLE OF CASES CITED.

	Page
Commonwealth v. Kilgallen, 379 Pa. 315, 108 A. 2d 780 (1954)	6, 7, 8, 9, 10, 11, 18
Commonwealth v. McCloskey, 443 Pa. 117, 133, 277 A. 2d 764 (1971), cert. den. 404 U. S. 1000	3, 5, 6, 8, 9, 10, 11, 14, 18
Durley v. Mayo, 351 U. S. 277, 76 S. Ct. 806 (1956)	6
Herb v. Pitcairn, 324 U. S. 117, 65 S. Ct. 459 (1945)	6
Jankovich v. Indiana Toll Road Commission, 379 U. S. 487, 85 S. Ct. 493 (1965)	11
Lloyd & Carpenter's Case, 5 Pa. L. J. 55, 3 Clark 188	3
McNair's Petition, 324 Pa. 48, 187 Atl. 498 (1936)	3
Miranda v. Arizona, 384 U. S. 436 (1966)	1, 6, 10, 12, 13, 14, 15, 16, 18
Pennsylvania v. Ware, 416 Pa. 52, 284 A. 2d 700 (1971); cert. den. October Term, 1971, No. 71-964; 92 S. Ct. 1606	11
Special Grand Jury Case, 397 Pa. 254, 154 A. 2d 592 (1959)	3

MISCELLANEOUS.

	Page
Constitution of Pennsylvania:	
Article I, Section 9	2, 7, 9
Article III, Section 32	7, 8
Pennsylvania Appellate Court Jurisdiction Act of 1970, § 204(c), 17 Purdon's Stat. § 211.204(a)	5
United States Constitution:	
Fourteenth Amendment	12
28 U. S. C. § 1257(3)	1

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

OPINIONS BELOW.

The petition for a writ of certiorari correctly sets forth the opinions below.

JURISDICTION.

Petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. § 1257(3). This Court lacks jurisdiction because the judgment of the court below was based on an independent and adequate state ground.

QUESTIONS PRESENTED.

1. Where the judgment of the court below is predicated upon two Pennsylvania Supreme Court decisions, both of which explicitly recite as the ground for decision a provision of the Pennsylvania Constitution, is that judgment based upon an independent and adequate state ground?

2. Is a decision dealing with warnings to be given to a witness subpoenaed to testify before an investigating grand jury an appropriate vehicle for reexamining the rules for custodial, police station interrogation established in **Miranda v. Arizona**, 384 U. S. 436 (1966)?

3. May a state court permissibly utilize the standard for an intelligent waiver of rights established by **Miranda** to determine whether there had been any waiver of rights granted by the Pennsylvania Constitution?

STATEMENT.

Petitioner's statement of facts deliberately obfuscates a relatively simple matter and, by distorting the dimension of the case and the grounds upon which it was decided by the court below, has frivolously imposed an unnecessary burden on the Court.

In March of 1969 the Philadelphia District Attorney presented a petition requesting a special investigating grand jury to investigate, *inter alia*, whether certain *city officials* had acted improperly in connection with an urban renewal project. A grand jury was impanelled on April 8, 1969.

Respondent, an officer, director and indirect stockholder in the private company selected as developer of the project, was subpoenaed to appear and testify before the grand jury. Prior to giving his testimony respondent was not told by the presiding judge that, should a problem arise during his questioning or should he be doubtful as to whether he could properly refuse to answer a question, respondent accompanied by counsel could obtain a ruling from the judge, rights accorded respondent by Article I, Section 9 of the Pennsylvania Constitution and cases decided by the Pennsylvania Supreme Court thereunder.

Under the compulsion of a subpoena, respondent was compelled to testify on two occasions before the grand jury in response to lengthy and detailed interrogation by the District Attorney covering 168 printed pages.

The averments in the petition seeking the impanelling of a special investigating grand jury are in marked contrast to the findings of that body in its presentments. None of the aforementioned charges in the petition was found by the grand jury to be factually supported, and its presentments found no facts to support those allegations made in the original petition for the appointment of that jury.

The grand jury did not recommend any indictments against any public officer with respect to the 1500 Market Street project. The indictments which it did recommend involved charges of private offenses as distinguished from those involving public corruption; had these charges alone been the subject of the petition requesting the appointment of an investigating grand jury, the court under the law of the Commonwealth of Pennsylvania could not have justified the appointment of such a jury.[1] Respondent was subsequently indicted solely upon his grand jury testimony.[2]

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1. An investigating grand jury in Pennsylvania is justified only where criminal courts direct the investigation of ". . . matters of general public import, which, from their nature and operation in the entire community, justify such intervention. The action of the courts on such occasions, rather bear on things than persons; the object being the suppression of general and public evils, affecting in their influence and operation communities rather than individuals and therefore, more properly the subject of general rather than special complaint. Such as great riots that shake the social fabric, carrying terror and dismay among the citizens; general public nuisances affecting the public health and comfort; multiplied and flagrant vices tending to debauch and corrupt the public morals, and the like. In such cases the courts may properly, in aid of inquiries directed by them, summon, swear, and send before the grand jury, such witnesses as they may deem necessary to a full investigation of the evils intimated. . . . But this course is never adopted in case of ordinary crimes, charged against individuals . . . . because such cases present none of those urgent emergencies which authorize a departure from the ordinary course of justice.": **Lloyd & Carpenter's Case**, 5 Pa. L. J. 55, 3 Clark 188. **McNair's Petition**, 324 Pa. 48, 187 Atl. 498, 503 (1936). **Special Grand Jury Case**, 397 Pa. 254, 256, 154 A. 2d 592, 594 (1959). **Commonwealth v. McCloskey**, 443 Pa. 117, 133, 277 A. 2d 764, 772 (1971), cert. den. 404 U. S. 1000.

2. The Superior Court so stated (221 Pa. Superior Ct. 244, 253, 289 A. 2d 96, 100 (1972):

> "We therefore conclude that appellant's testimony was received in violation of his constitutional rights and could not serve, *as the record reveals it did*, as the basis, in whole or in part, of any of the indictments entered against him." (Emphasis supplied.)

Indeed, the Commonwealth in its answer to paragraph 15 of respondent's Application to Quash took the position that respondent's testimony was a "valid basis for indictment" (331a).

Judge McGlynn of the Philadelphia Court of Common Pleas denied respondent's application to quash the indictments. Based upon respondent's refusal on the second of his two days of grand jury testimony to answer a question as beyond the scope of the investigation,[3] Judge McGlynn inferred that respondent was aware of the rights accorded him by Article I, Section 9 of the Pennsylvania Constitution. This inference, in turn, formed the basis of Judge McGlynn's decision that respondent had waived his rights.

The Pennsylvania Superior Court reversed Judge McGlynn's order and quashed the indictments. It held that respondent had not been given the warnings required by the Pennsylvania Constitution and had not waived the rights embodied in the required warnings. On May 24,

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3. Following respondent's first appearance before the grand jury on August 26, 1969, and prior to his second appearance on September 30, 1969, he stated at a press conference that he had been advised that the District Attorney or members of his staff had attempted to persuade certain witnesses to make false statements. On his second appearance before the grand jury, he was questioned by the District Attorney respecting this statement and asked to identify these witnesses. He declined to do so on the grounds that the grand jury investigation was not an investigation of the District Attorney's office, that the questions were beyond the scope of the grand jury's investigation, and that he would prefer not to involve third parties (133a-136a, 137a-139a).

Following this refusal, the District Attorney then stated that he would see if Judge Sloane was available to give respondent an opportunity to consult with counsel, to which respondent replied that he had no need to consult with counsel on the subject (137a).

Following this colloquy, the District Attorney resumed his interrogation of respondent that was begun on August 26, 1969 and *again* questioned him at length respecting the 1500 Market Street project. Later in the day, he and the District Attorney met with Judge Sloane. Judge Sloane refused to order respondent to answer the questions pertaining to the identity of the witnesses mentioned at the press conference.

1972 the Supreme Court of Pennsylvania denied petitioner's request for the allowance of an appeal.[4]

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4. § 204(a) of the Pennsylvania Appellate Court Jurisdiction Act of 1970, 17 Purdon's Stat. § 211.204(a), provides that "Final orders of the Superior Court . . . may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court . . .".

The Commonwealth's petition for allocatur was based on a contention that the Superior Court had incorrectly interpreted **Commonwealth v. McCloskey,** 443 Pa. 117, 277 A. 2d 764 (1971), cert. den. 404 U. S. 1000, involving rules for proceedings before Pennsylvania grand juries, *thus emphasizing that Pennsylvania criminal procedure was involved both in this case and* **McCloskey.**

ARGUMENT.

1. The Decision of the Superior Court of Pennsylvania Was Based on an Adequate and Independent State Ground.

Clearly, the decision of the court below rests upon an adequate and independent non-federal ground.

This Court from the time of its foundation has adhered to the principle that it will not review state court judgments that rest upon adequate and independent state grounds. **Herb v. Pitcairn**, 324 U. S. 117, 125, 65 S. Ct. 459, 463 (1945). Indeed, when it appears that the judgment *may* have rested upon a non-federal ground, this Court will not take jurisdiction to review that judgment. **Durley v. Mayo**, 351 U. S. 277, 281, 76 S. Ct. 806, 809 (1956).

In deciding this case the Superior Court of Pennsylvania, contrary to the District Attorney's statement in the petition, did not announce any "new rule". It based its decision upon the rules of law enunciated by the Pennsylvania Supreme Court in **Commonwealth v. Kilgallen**, 379 Pa. 315, 108 A. 2d 780 (1954), and **Commonwealth v. McCloskey**, 443 Pa. 117, 277 A. 2d 704 (1971), cert. den. 404 U. S. 1000, in both of which the Constitution of Pennsylvania was involved. Both decisions hold that it is a violation of the Pennsylvania Constitution to compel testimony without first giving the warnings which those decisions so carefully spelled out. The Superior Court of Pennsylvania, in invalidating the indictments, ruled *as a matter of Pennsylvania law* that the principles of **McCloskey** and **Kilgallen** were ignored in the proceedings before the grand jury. Thus, the basic issue in the case involved a question of Pennsylvania criminal procedure.[5]

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5. Petitioner quite improperly states that the court below "relied entirely" upon **Miranda**.

In **Kilgallen,** defendant was compelled to give testimony against himself before an investigating grand jury concerning a charge of bribery. The case involved not only Article I, §9 of the Constitution of Pennsylvania which provides that "In all criminal prosecutions the accused . . . cannot be compelled to give evidence against himself . . .", but also Article III, §32 of the Pennsylvania Constitution which prohibits the use of such testimony against the accused by an indicting grand jury in considering an indictment against him for bribery. In holding that both Pennsylvania constitutional provisions had been violated the Pennsylvania Supreme Court said (p. 326-328):

> "Under this provision of the Constitution any testimony which appellant was compelled to give before the investigatory grand jury on the charges of bribery could not be used against him in the proceeding before the indicting grand jury which was a 'judicial proceeding'. The constitutional provision contains no limitation in the prohibited use. The use proscribed is complete, unequivocal and without reservation, precisely as if the testimony had never been uttered. Therefore its use, whether or not testimony of other witnesses was adduced before the indicting grand jury, was a clear violation of Article III, Section 32 of the Constitution. Had there been a trial and a conviction and the same testimony presented against the defendant, the conviction could not be upheld notwithstanding the fact that other sufficient evidence might have supported the verdict. It is not a question whether the hearing body, petit or grand jury, was influenced by such testimony. It may not be assumed that it was not. The ban is absolute in the absence of voluntary waiver. The language of the provision is comprehensive. The testimony compelled to be given against one who may

be charged with bribery may not thereafter be used against the one so testifying *in any judicial proceeding.*" (Court's emphasis.)[6]

In answer to the state's contention that defendant in **Kilgallen** should have refused to testify and thus obtain a test by contempt proceedings the Pennsylvania Supreme Court said (p. 325):

". . . we will not adopt such conception as the law of this jurisdiction. A waiver of constitutional rights must be voluntary. It is not voluntary when made under judicial compulsion."

In **McCloskey**, the Supreme Court of Pennsylvania quashed indictments based upon testimoy given by defendants before the same grand jury which acted in this case, without the warnings held essential by that court and in violation of their rights against self incrimination. Mr. Justice Roberts wrote:

"*Concerning the assistance of counsel and the right against self incrimination,* while we do not today hold that a witness is entitled to have counsel present in the hearing room or that he is entitled to step outside the door and consult with counsel after every question, *we do believe that a witness should receive a warning by the court* in charge of the investigating grand jury *that if the witness is confused or believes his answer might be incriminating, he may come before the court accompanied by counsel* and be advised of his rights. *This procedure was not followed* with reference to certain of the individual appellees now before us. Accordingly, *those indictments in any way based upon a defendant's own testimony given without this*

6. Article III, Section 32 of the Pennsylvania Constitution was repealed in 1967.

warning and in violation of his right against self incrimination must be quashed." (**Commonwealth v. McCloskey, supra** at p. 120. Emphasis supplied.) [7]

In **McCloskey** the Pennsylvania Supreme Court clearly stated that its holding was based on the privilege against self incrimination contained in Article I, Section 9, of the Pennsylvania Constitution as well as the Fifth and Fourteenth Amendments of the United States Constitution. Mr. Justice Roberts stated the question to be:

"[W]hether, or to what degree, a subpoenaed witness and potential defendant before an investigating grand jury is entitled to the assistance of counsel to aid him in asserting his right against self incrimination guaranteed both by the Fifth Amendment, applied to the states through the Fourteenth Amendment, *and Article I, Section 9 of the Pennsylvania Constitution.*" (Emphasis added.) (**Commonwealth v. McCloskey, supra,** at p. 120) [8]

In so holding the Pennsylvania Supreme Court followed its ruling in **Kilgallen,** and said (p. 147):

"The principle of *Kilgallen* is still valid and dictates our result today on this issue. Defendants McCloskey, Taylor and Marzullo were on notice that the investigating grand jury was inquiring into the stadium project. They were judicially compelled to testify without sufficient warning or protection con-

7. In **McCloskey,** the Pennsylvania Supreme Court specifically disavowed any reliance on **Miranda** (443 Pa. at page 142): "Neither Escobedo nor Miranda were even remotely concerned with right to counsel before an investigating grand jury."

8. Article I, Section 9 of the Pennsylvania Constitution provides in relevant part: "In all criminal prosecutions, the accused . . . cannot be compelled to give evidence against himself. . . ."

cerning their right against self incrimination. The resulting presentment and indictments were based in part on this constitutionally impermissible testimony and hence must be quashed."

It is especially important to observe that the Superior Court's decision, far from being based upon **Miranda**, applied principles of Pennsylvania law enunciated in **Kilgallen** and **McCloskey**, and referred to **Miranda** only in its discussion of the question whether state constitutional rights had been waived in the circumstances of the case. **Miranda** was not used to set the rights themselves.[9]

The Superior Court was under no obligation to apply a federal standard in determining whether state constitutional rights were waived. The opinion of the court below makes it clear that **Miranda** was referred to in its discussion in the nature of an example and not because the federal Constitution, i.e., the Supremacy Clause, so required.

On the contrary, the court below based its decision on **McCloskey** which, as we have shown, was decided on the basis of the Pennsylvania State Constitution and only referred to **Miranda** because it was deemed helpful in determining whether respondent had waived his state-created constitutional rights. It should be noted that petitioner unsuccessfully attempted to obtain review of **McCloskey** by this Court, despite the fact that **McCloskey** is clearly based on state constitutional rights.[10]

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9. Indeed, as the Superior Court noted, "[t]he Commonwealth argues that the **McCloskey** instructions are not based on the **Miranda** case . . ." (221 Pa. Superior Ct. at p. 251; petition, p. 47).

10. In the **McCloskey** petition for certiorari, pages 21-22, this petitioner makes the strenuous argument that the Pennsylvania Supreme Court decision did not involve **Miranda**. Though a denial of certiorari is technically not a decision on the merits, it would appear that the argument made by petitioner in McCloskey forecloses the contrary position taken by it here.

In **Pennsylvania v. Ware**, 446 Pa. 52, 284 A. 2d 700 (1971); (cert. den. October Term, 1971, No. 71-964; 92 S. Ct. 1606 (1972)) certiorari was sought upon grounds substantially similar to those asserted here, but this court vacated an order granting certiorari and denied the petition "it appearing that the judgment below rests upon an adequate state ground."

Respondent's constitutional privilege against self incrimination, his right to remain silent, his right to be represented by counsel, and his right, if he had any doubt as to the propriety of any question asked him, to come before the judge supervising the grand jury to have the doubt resolved, were guaranteed him by the Pennsylvania Constitution and the principles declared by the Pennsylvania Supreme Court in **McCloskey** and **Kilgallen.**

When respondent was compelled to testify in the instant case before the grand jury, he was an officer, director and stockholder of the corporations named in the District Attorney's petition for a special investigating grand jury. It is implicit that although he was then the focus of a criminal investigation, he was not informed by the Court, the District Attorney or the grand jury that he had been made the target of the investigation. Without having been given any of the warnings which he was guaranteed by clearly established principles of Pennsylvania constitutional law, he was charged in the Eighth Presentment with criminal conduct on the basis of his testimony and ultimately indicted upon the sole basis of the Eighth Presentment on charges entirely different from those asserted in the District Attorney's petition for an investigating grand jury against the corporations with which he was connected.

In point is **Jankovich v. Indiana Toll Road Commission**, 379 U. S. 487, 85 S. Ct. 493 (1965) in which the Supreme Court of Indiana had invalidated a zoning ordinance on the ground that it effected a taking of private

property in violation of the just compensation requirement of the Indiana Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. This Court, after granting certiorari, dismissed the writ as improvidently granted on the ground that the Indiana constitutional provision was an independent and adequate ground for decision thereby depriving this Court of jurisdiction. This decision was reached notwithstanding the fact that the Indiana Supreme Court had not analyzed separately the effect of the two constitutional provisions.

It is so clear that the judgment of the court below is based upon an adequate, independent, non-federal ground and that the case is such an inappropriate vehicle for re-examination of **Miranda v. Arizona**, 384 U. S. 436 (1966) that the Court need not be detained by the strained and exaggerated protestations of the petition.

2. The Decision Below Is Not an Appropriate Vehicle for Re-Examination of the Rules Established by Miranda v. Arizona.

In **Miranda v. Arizona**, 384 U. S. 436 (1966), this Court wrote:

> "*The Fifth Amendment privilege is so fundamental* to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, *we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation;* a warning is a clearcut fact. More important, whatever the background of the person interrogated, a warning at the time of interrogation

is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time." (384 U. S. at pp. 468-469. Emphasis supplied.)

* * *

"Accordingly we hold that an individual held for interrogation *must be clearly informed that he has the right to consult with a lawyer. . . . As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead.* Only through such a warning is there ascertainable assurance that the accused was aware of this right." (384 U. S. at pp. 471-72. Emphasis supplied.)

Miranda was designed to ameliorate the coercion inherent in custodial police investigation. 384 U. S. at 439. A substantial portion of the petition (pages 14 to 28) is devoted to a discussion of the problems faced by police in interrogating suspects, *e.g.*, the need to act rapidly, the fear that **Miranda** warnings will afford the suspect time to reach for a weapon, and the asserted inclination of police to lie at trial as to whether the required warnings were given. Such problems are simply not involved in the present case, which is concerned only with the warnings which should be given by the presiding judge to a prospective grand jury witness.

The marked differentiation between the situation contemplated by **Miranda**, and grand jury interrogation, are illustrated by the following contrast:

Warnings Required by Miranda	*Warnings Required by McCloskey*
1. Right to remain silent.	1. Witness may consult with counsel before and after testifying.
2. Anything said can and will be used against the individual in court.	2. If witness is doubtful as to whether he can properly refuse to answer a question, the witness accompanied by counsel may seek a ruling from the court.
3. Right to consult with an attorney and right to presence of an attorney during interrogation.	
4. If individual is indigent, counsel will be appointed.	

The contrast is further emphasized by the fact that while **Miranda** specificially requires the warning that the suspect is entitled to have counsel present during questioning, **McCloskey** specifically holds that there is no right to have counsel present in the grand jury room.

The fact is that in **McCloskey** the Pennsylvania Supreme Court, while adhering to the general reasoning and philosophy of **Miranda** laid down a rule of conduct respecting the nature of the warnings to be given a prospective grand jury witness which did not track the pattern required by **Miranda**.

The petition, instead of limiting itself to the merits of this case, launches a generalized broadside attack on the ruling in **Miranda**, without regard to the narrow factual context in which this case was decided by the court below on the basis of adequate state grounds.

In an extraordinary exercise of cataloguing, the petition floods 343 lines of footnotes with a plethora of citations, notes, articles and literature pertaining to **Miranda**, but the petition's prolix and discursive lamentations present no

basis in the context of the facts in the present case for any modification of, or departure by this Court from, the sound and reasoned principles announced in **Miranda**, which have been faithfully followed and applied by courts, federal and state, throughout the land since the decision was rendered.

In the welter of criticism and fault-finding with respect to **Miranda** which is found in the petition, no attempt is made, nor could there be, to connect the facts of the present case with the calamitous consequences conjured by petitioner in following **Miranda**. Here, there was an admitted and acknowledged failure to give the warnings to which respondent was entitled under settled Pennsylvania law. The fulminations of the petition in respect of other fact settings have no relation to or bearing upon this case and are completely out of place.

This is an improper attempt to use this case—decided, as it was, on the basis of established principles of Pennsylvania constitutional law—as an instrument by which to challenge the validity of this Court's ruling in **Miranda**.

The present case is obviously not an appropriate vehicle for consideration of arguments favoring modifying or overruling the **Miranda** decision.

Petitioner, in its zeal to negate a wise and beneficent ruling in **Miranda**, strains too much.

3. Respondent Was Denied the Warnings To Which He Was Entitled Under Pennsylvania Law, and He Did Not Waive His Right to Receive Such Warnings.

It is important for this Court to note that the fact that respondent is a lawyer [11] is not legally significant in this

11. There is no record support for the petition's statements that respondent was a "highly sophisticated", "financially successful", "well-known" and "very experienced attorney". Whether or not he was is quite immaterial.

case. It must be emphasized that Judge McGlynn did *not* predicate his ruling upon the fact that respondent is a lawyer. The Commonwealth did *not* contend before the Superior Court that Judge McGlynn's order was justified by the fact that respondent is a lawyer. Judge McGlynn recognized, on the contrary, that respondent *was* entitled to the warnings and judicial guidance and instruction with respect to constitutional rights and privileges designed for his protection, but erroneously concluded, as the Superior Court correctly declared, that a waiver by respondent could be inferred from the factual context described above.

As the Superior Court correctly observed:

> "To hold the *McCloskey* instructions need not be given to an attorney while the *Miranda* and *Escobedo* warnings are required to be, is to make a distinction without basis." (221 Pa. Superior Ct. 244, 252)

It follows that the Superior Court correctly concluded that Judge McGlynn erred in inferring a waiver by respondent of the constitutional warnings to which he was entitled. It is established law that a court will not accept circumstantial evidence that a person under interrogation was aware of his constitutional rights. ***There can be no waiver of the right to receive such warnings.*** The warnings *must* be given.

Disregarding entirely the holding in **Miranda** to the effect that no amount of circumstantial evidence will take the place of warnings mandated by the Constitution, there is simply nothing in the record from which Judge McGlynn could have inferred that the refusal to answer the questions on the occasion of respondent's second appearance before the grand jury was an exercise of respondent's constitutional rights and, therefore, a waiver of their benefit.

The petition suggests (p. 11) that "respondent was aware of his right to go before the judge presiding over the grand jury and obtain a ruling as to whether he must answer a given question." This statement is completely erroneous. Respondent appeared before a judge in obedience to a subpoena for the purpose of being sworn before he was taken before the grand jury for interrogation by the District Attorney, and was never given the warnings with respect to his right against self incrimination to which he was constitutionally entitled.

Where, as here, respondent was under the justified impression that he was not, as an individual, the focus of a criminal investigation, and that the grand jury's inquiry was concerned only with the subject matter of the District Attorney's petition pertaining to corporate action of National Land, his refusal to answer a few questions on a narrow, irrelevant subject,[12] completely unrelated to the investigation, cannot support the inference drawn by Judge McGlynn that he waived the warnings which he was constitutionally entitled to receive before he was questioned concerning subjects which he did not know and had not been informed involved him as a target of a criminal prosecution. The Superior Court correctly rejected any such inference.

Moreover, even assuming without conceding that there is a basis for finding a waiver at the grand jury session of September 30, 1969, this could not have retrospective operation to validate the previous violations of respondent's rights at the session on August 26, 1969 when he was first compelled to give testimony on which the presentment was based.

In summary, we submit that, under Pennsylvania law, any person who is the target of an investigation by an in-

12. See footnote 3 at page 4.

vestigating grand jury, regardless of his previous experience with the law, is entitled to be informed of his Pennsylvania constitutional rights; *that these warnings are an essential requirement of the law and may not be omitted or dispensed with;* and that, absent such warnings, there can be no waiver of the rights.

CONCLUSION.

(a) The Pennsylvania Superior Court in deciding this case did so under the Constitution of the State of Pennsylvania, following similar decisions of the Pennsylvania Supreme Court in **McCloskey** and **Kilgallen**;

(b) The incidental reference to **Miranda** by the court below was only for the purpose of a decision of whether the respondent had, in fact, waived the rights guaranteed him by the Pennsylvania Constitution;

(c) Petitioner, despite its present protestations, has taken the position in its argument before the Pennsylvania Superior Court that **Miranda** was not involved, and in its petition for certiorari in **McCloskey**, it did not argue that **Miranda** was involved.

(d) The facts establish conclusively that the decision below was predicated on an adequate state ground. Though petitioner was aware that this was so in **McCloskey** and was so informed by this Court in **Ware**, its petition contains no denial of the fact that the decision in this case was based on an adequate state ground. Under these circumstances, this case does not furnish a basis for reconsideration of the **Miranda** rulings.

(e) It is clear that no point of fact or law was overlooked, misinterpreted or misapprehended by the Pennsylvania Superior Court, and no valid reason has been specified for the grant of certiorari.

(f) The questions in this case were carefully and thoroughly briefed and fully presented at oral argument before the Superior Court of Pennsylvania. That Court held the matter under consideration for over three months and the appeals were doubtless the subject of close and thorough consideration, and meticulous analysis and discussion by members of that court.

(g) The contentions raised in the petition were carefully reviewed and properly rejected by the court below. There is no conflict between the decision below and any decision of this Court, and it is not a case of such dimension as to merit consideration by this Court.

(h) The Supreme Court of Pennsylvania, after having the Commonwealth's petition for allocatur under consideration for almost two months, declined to review the judgment of the Superior Court.

(i) The judgment of the court below was sound in law and in strict conformity with legal principles established by the Constitution of the United States, the Constitution of Pennsylvania, and the decisional law of this Court and the rulings of the Supreme Court of Pennsylvania.

(j) "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor": Supreme Court Rule 19(1).

For the foregoing reasons, review by this Court is not warranted.

Respectfully submitted,

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